

REMARKS / ARGUMENTS

The present application includes pending claims 1-28. Claims 1-24 have been amended to further clarify the claim language. The Applicant points out that the amendments to claims 1-24 are supported by, for example, Figs. 2 and 6-7, and as well as related description in the specification. Claims 1, 9 and 17 are independent claims. Claims 2-8, 26, 10-16, 27 and 18-25, 28 depend directly or indirectly from claims 1, 9 and 17, respectively. The Applicant respectfully submits that the claims define patentable subject matter.

Claims 1-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent No. 6,032,194 issued to Gai et al. (hereinafter, Gai), in view of U.S. Patent Application Publication 2002/0085495, by Jeffries et al., (hereinafter, Jeffries), and U.S. Patent No. 6,005,884, by Cook et al. (hereinafter Cook). The Applicant respectfully traverses these rejections based on the following remarks.

I. OBECTION TO THE SPECIFICATION

The Examiner objected the specification because of the missing application numbers on pages 27 and 28 (paragraphs 77-80). The Applicant has amended paragraphs 77-80 to include the application numbers as requested. In addition, the Applicant has amended the typos in paragraphs 67-69, and submits that the amendments are supported at least in Figs. 2 and 6-7 and as well as related description in the specification. The Applicant respectfully requests that the

objection to the specification be withdrawn.

II. REJECTION OF CLAIMS 11-20 UNDER 35 U.S.C. § 101

The Applicant now turns to the rejection of claims 9-16, 27 under 35 U.S.C. § 101 as being non-statutory because the claimed invention is allegedly directed to non-statutory subject matter. The Office Action states the following:

“A computer-readable storage, having stored thereon, a computer program,” can be broadly interpreted as a carrier wave or transmission media which are directed towards non-statutory.”

See the Office Action at page 3. The Examiner is referred to p. 52 of the “Interim Guideline for Examination of Patent Applications for Patent Subject Matter Eligibility” (IGPSME), which states the following:

Data structures not claimed as embodied in computer-readable media are descriptive material per se and are not statutory because they are not capable of causing functional change in the computer... Similarly, **computer programs claimed as computer listings per se**, i.e., the descriptions or expressions of the programs, are not physical “things.” They are neither computer components nor statutory processes, as they are not “acts” being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program’s functionality to be realized.

See the IGPSME at pages 52-53. Even though data structures not claimed as embodied in computer-readable media, as well as computer programs claimed as computer listings per se, are not statutory subject matter, the Applicant points out that **claims 9-16, 27 of the present invention do not fall under any of the**

above mentioned non-statutory subject matter categories. The Examiner is furthermore referred to the following IGPSME citation:

In contrast, **a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships** between the computer program and the rest of the computer which permit the computer program's functionality to be realized, **and is thus statutory.** See Lowry, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

Computer programs are often recited as part of a claim. USPTO personnel should determine whether the computer program is being claimed as part of an otherwise statutory manufacture or machine. In such a case, **the claim remains statutory irrespective of the fact that a computer program is included in the claim. The same result occurs when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program.** Only when the claimed invention taken as a whole is directed to a mere program listing, i.e., to only its description or expression, is it descriptive material per se and hence nonstatutory.

See the IGPSME at page 53. Claims 11-20 in the present invention relate to **machine-readable storage for storing a computer program having at least one code section** for providing seamless connectivity and communication in a multi-band multi-protocol hybrid wired/wireless network. Furthermore, **the code sections may be executed by a machine for causing the machine to perform the method steps** recited by, for example, claims 1-8. Therefore, claims 9-16, 27 define statutory subject matter as per the above IGPSME citation.

The Examiner is also referred to the following MPEP citation for support:

When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and

functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

See MPEP § 2106.01. The Applicant, therefore, submits that claims 9-16, 27 are directed to statutory subject matter, and that the rejection of claims 9-16, 27 under 35 USC § 101 should be withdrawn.

III. REJECTION UNDER 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure, Rev. 6, Sep. 2007 ("MPEP") states the following:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that "rejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

See the MPEP at § 2142, citing *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), and *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art" (citing *KSR International Co. v.*

Teleflex Inc., 82 USPQ2d 1385, 1396 (2007)). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness:

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

A. The proposed combination of Gai, Jeffries, and Cook does not render claims 1-28 unpatentable

The Applicant now turns to the rejection of claims 1-28 as being unpatentable over Gai in view of Jeffries and Cook.

A(1). Independent Claims 1, 9 and 17

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a). The Applicant has amended claim 1, and submits that the combination of Gai, Jeffries and Cook does not disclose or suggest at least the limitation of “determining, ... at least one available switch port on a network switch, for handling a first access point group, wherein said first access point group is communicatively coupled to a first default switch port of said network switch, and wherein said first default switch port is different from said at least one available switch port”, as recited in claim 1 by the Applicant. In the Office Action, the Examiner relies on Yoshida and states the following:

“Regarding Claims 1 , 9, and 17, Gai teaches **determining ... at least one available switch port having a capability to handle a LAN** (Col.4:lines 10-15), said first access point group having a first default switch port (Col.11:lines 8-15 and Col 5:lines 20-24 the original active port initially selected based on least cost is the default port);”

See the Office Action at pages 3-4. The Examiner relies for support on Gai which states:

“As BPDU information is up-dated and/or timed-out, the spanning tree is recalculated and ports may transition from the blocked state to the forwarding state and vice versa. That is, as a result of new BPDU information, a previously blocked port may learn that **it is now the root port or the designated port for a given LAN.**”

See Gai at col. 4, lines 10-15. As stated by the Examiner, and shown by the above citation, Gai teaches that the root port (i.e., the alleged “at least one available switch port”) is designated for a LAN. Therefore, Gai **does not** disclose or suggest that the root port (i.e., the alleged “at least one available switch port”) is for handling a first access point group.

The Examiner further alleges that Gai discloses the claimed “first access point group”, and relies for support on the following citation of Gai which states:

“Significantly, for each access switch 114-116, only one port (local or trunk) that represents a path from the access switch to the root (i.e., provides **connectivity to the root through links, shared media, switches**, etc.) will be forwarding. All other ports (local or trunk) that represent paths from the access switch to the root will be blocked. In other words, **only one port at each access switch 114-116 that provides connectivity to the root will be forwarding.**”

See Gai at col. 11, lines 8-15 (emphasis added). The Applicant points out that Gai, in the above citation, only discloses the access switches 114-116. There

is simply no disclosure or suggestion of any access point group, as alleged by the Examiner. In this regard, Gai does not disclose or suggest the claimed “at least one available switch port on a network switch, for handling a first access point group”.

In addition, the Examiner seems to rely on the above citation and alleges that Gai’s “**only one port**” is the alleged “first default switch port”. The Applicant respectfully disagrees and points out that Gai only discloses that the “**only one port**” is for providing **connectivity to the root**, i.e., to another shared media or switch (see Gai at col. 11, lines 8-15). In other words, Gai’s “**only one port** at each access switch **provides connectivity to the root**” refers to the same “root port” (i.e., the alleged “at least one available switch port”) on each of the switch 114-116 (See Gai at col. 4, lines 10-15). In this regard, Gai also does not disclose or suggest the claimed “first default switch port”, let alone disclosing or suggesting “said first default switch port is different from said at least one available switch port”, as recited in claim 1 by the Applicant.

Accordingly, with the absence of disclosure of the claimed “first default switch port” by Gai, the Applicant submits that Gai subsequently also does not disclose or suggest the claimed “wherein said first access point group is communicatively coupled to a first default switch port of said network switch”.

In addition, regarding the rejection of claim 1, the Examiner further states the following:

"Gai teaches ...provisioning said at least one available switch port to **provide service to said LAN** (Col.12:lines 19-27 and Col.5:lines 44-47, the backup port is the at least one available switch port providing service to said LAN); and communicating information using at least one of said first default switch port and said at least one provisioned switch port (Col.12:lines 19-27 and Col.5:lines 44-47 the backup port is the at least one available switch port),"

See the Office Action at page 4. The Applicant points out that the Examiner initially equates the root port to the claimed "at least one available switch port" (See the Office Action at page 3). In the above statement, the Examiner seems to change his position in equating Gai's "backup port" to the claimed "at least one available switch port". Nevertheless, the Applicant points out that Gai still does not disclose the claimed "first access point group" and the claimed "wherein said first access point group is communicatively coupled to a first default switch port of said network switch".

Furthermore, the Examiner concedes the following in the Office Action:

"...the combination of Gai and Jeffries does not expressly teach at least one available switch port having a capability to handle a first access point group."

See the Office Action at page 4. The Examiner relies on Cook to disclose the above deficiencies, and relies for support on the following citation by Cook:

"In the past, the requirements for communicating with both fixed and remote terminal sites have been addressed by a wireless data communications system having **one or more access points connected to a host computer via a local area network (LAN)**.

The conventional wireless data communications system is characterized by **one or more access points**, commonly known as

base stations, **communicating via a wireless communications link with remote terminals and with a host computer via a LAN.**"

See Cook at col. 3, lines 37-46 (emphasis added). The Applicant points out that Cook discloses that the access points (the alleged first access point group) are connected to a host computer via a LAN. **Cook, however does not disclose or suggest that the "first access point group is communicatively coupled to a first default switch port of said network switch,"** as recited in claim 1 by the Applicant. In this regard, Cook still does not overcome the above deficiencies of Gai and Jeffries, as alleged by the Examiner.

Accordingly, based on the above rationale, the Applicant maintains that the combination of Gai, Jeffries and Cook does not disclose or suggest "provisioning said at least one available switch port of said network switch to provide service to said first access point group; and communicating information using at least one of said first default switch port and said at least one provisioned switch port of said network switch," as recited in claim 1 by the Applicant.

Therefore, the Applicant maintains that the combination of Gai, Jeffries and Cook does not establish a prima facie case of obviousness to reject the Applicant's independent claim 1 and should be allowable. The Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 103(a) be withdrawn. Independent claims 9 and 17 are similar in many respects to independent claim 1. Therefore, the Applicant respectfully submits that claims 9 and 17 are also allowable at least for the reason stated above with regard to claim

1.

B. Dependent Claims 2-8, 26, 10-16, 27 and 18-25, 28

Dependent claims 2-8, 26, 10-16, 27 and 18-25, 28 depend directly or indirectly, from independent claims 1, 9 and 17, respectively. Consequently, claims 2-8, 26, 10-16, 27 and 18-25, 28 are submitted to be allowable at least for the reasons stated above with regard to claim 1. The Applicant respectfully requests that the rejection of claims 2-8, 26, 10-16, 27 and 18-25, 28 under 35 U.S.C. § 103(a) be withdrawn.

Regarding the rejection of claims 5, 13 and 21, the Examiner is referred to the above argument regarding claim 1. Namely, the combination of Gai, Jeffries and Cook does not disclose or suggest that the respective "available switch port of said network switch" is for handling the respective "access point group". Also, the combination of Gai, Jeffries and Cook does not disclose or suggest that the respective "access point group is communicatively coupled" to the respective "default switch port of said network switch". Therefore, the Applicant maintains that claims 5, 13 and 21 are submitted to be allowable.

Likewise, claims 6-7, 14-15 and 22-23 are also allowable based on their dependency on claims 5, 13 and 21 respectively.

Regarding the rejection of claims 25-28, the Applicant has reviewed the citations in Gai (col. 10, lines 1-12, col. 11, lines 8-24 and 41-51, col. 12, lines 19-

27) and submits that Gai at least does not disclose the claimed “a bandwidth management controller, a quality of service controller, a load balancing controller, a session controller”. Therefore, the Applicant maintains that claims 25-28 are submitted to be allowable.

The Applicant also reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1-28.

Application No. 10/658,450
Reply to Office Action of December 3, 2008

CONCLUSION

Based on at least the foregoing, the Applicant believes that all claims 1-28 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and request that the Examiner telephone the undersigned Patent Agent at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: March 3, 2009

/ Frankie W. Wong/

Frankie W. Wong
Registration No. 61,832
Patent Agent for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 WEST MADISON STREET, 34TH FLOOR
CHICAGO, ILLINOIS 60661
(312) 775-8093 (FWW)